THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26931 of 2006

27.12.2006

Between:

Velugubantla Suryavathi, W/o.Gopala Krishna
And another

… Petitioners

AND

The District Collector, East Godavari, Kakinada
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26931 of 2006

ORDER:

The two petitioners filed the instant writ petition challenging the notification issued by the second respondent under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity) proposing to acquire land admeasuring Acs.3.11 in survey No.95/2B3B situated at Gurajanapalli, Hamlet of Uppalanka Village of Karapa Mandal in East Godavari District (hereafter referred to as, the subject property).

The petitioners are joint owners of the subject property. They allege that the land is sought to be acquired for providing house sites to weaker sections under Integrated Novel Development In Rural And Model Municipal Areas (INDIRAMMA). They allege that they dug prawn tanks and personally operating the same and though there are adequate lands in the village, respondents issued the impugned notification due to political influence. A contention is also raised that the notification issued by the first respondent is without jurisdiction and conferring powers on the second respondent to discharge the duties under Section 4(2) of the Act is illegal and arbitrary.

A perusal of the impugned notification would show that the notification is issued by the District Collector. Under the present legal dispensation, it is competent for the District Collector to issue notification to acquire the land for providing house sites. There cannot be any objection on this. Secondly under subsection (2) of Section 4 of the Act, it is always competent for the Land Acquiring Authority to designate any Officer of the Revenue Department to discharge the functions under Section 4(2) of the Act. Be it noted that under Section 4(2) of the Act, the Officer authorized can enter upon the land for the purpose of conducting survey and taking levels of land and conducting soil test. Conferring power on the Revenue Divisional Officer (RDO),

Kakinada – second respondent herein; does not in any manner defeat the rights of the petitioners. Further though the RDO is authorized to conduct enquiry under Section 5-A of the Act, which has not dispensed with, the same is valid. The only requirement is that after conducting enquiry under Section 5-A of the Act, the RDO has to submit a report to the District Collector, who will then take appropriate decision before issuing/not issuing a declaration under Section 6 of the Act. This aspect of the matter has been considered by this Court in **Penmetsa Venkata Satya Appala Visweswara Durga Satya Subrahmanya Varma v The Secretary to Government of A.P.**[1] wherein it was held as follows.

> A plain reading of the above would show that all the objections made under subsection (1) of Section 5-A of the Act shall be made to the Collector in writing. After receiving the objections, the Collector shall have to give the objector an opportunity of being heard, conduct enquiry as he thinks necessary and then submit a report to the Government for a decision. Therefore, the RDO or any Revenue Officer exercising powers of Collector as per Section 3(c) or Section 3-A of the Act is only given power to make or submit a report to such Authority, who issued notification under Section 4(1) of the Act. There is no dispute that the Collector is exercising the powers of the Government as delegated under Section 3-A of the Act and, therefore, if one reads the Collector in the place of "appropriate Government" appearing in subsection (2) of Section 5-A of the Act and reads the RDO for "Collector", it becomes abundantly clear that the RDO cannot reject the objections raised by the owners. The limited power given to the RDO under Section 5-A of the Act is to submit a report to the District Collector, who is alone competent to take a decision, which shall be final.

For the above reasons, this Court holds that this writ petition is misconceived and liberty is given to the petitioners to raise all their objections before the second respondent in the enquiry under Section 5-A of the Act.

The writ petition, with the above observations, is accordingly dismissed. No costs.

December 27, 2006. (**V.V.S.RAO,J**)
YS

[1] W.P.Nos.20360 of 2006 and batch, dated 29.9.2006